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DISCONTINUED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-88
Table of Allotments,)	RM-8760
FM Broadcast Stations.)	
(Manitowoc and Two Rivers,)	
Wisconsin))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 8, 1996

Released: November 15, 1996

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 11 FCC Rcd 4667 (1996), issued in response to a petition for rule making filed by Lyle Robert Evans d/b/a High Mark Radio Company ("High Mark"). The Notice proposed the allotment of Channel 255A to Two Rivers, Wisconsin, as that community's first local broadcast service. The Notice also stated that an editorial correction would be made to the FM Table of Allotments to list Channel 272A at Manitowoc, Wisconsin, rather than Two Rivers, Wisconsin. This would reflect the fact that Station WQTC-FM, operating on Channel 272A, is, in fact, licensed to Manitowoc.¹ High Mark filed comments and reply comments reaffirming its interest in Channel 255A at Two Rivers. Additional comments were filed by WTRW, Incorporated ("WTRW"), licensee of Station WTRW-AM, Two Rivers, Wisconsin, Tri-County Radio, Incorporated ("Tri-County"), licensee of Station WKTT-FM, Cleveland, Wisconsin, and Metro North Communications, Incorporated ("Metro North"), applicant for Channel 225A, New Holstein, Wisconsin.

2. WTRW, Tri-County and Metro North filed comments objecting to the proposed editorial amendment for Channel 272A. According to WTRW, Station WQTC-FM, has been operating with a Two Rivers, Wisconsin, "city of license" identification since coming on the air in 1968. WTRW also notes that Station WQTC-FM already operates from a tower site which is less than one mile from the city limits of Two Rivers, Wisconsin, and uses Two Rivers in its primary station identification. Further, Station WQTC-FM provides a 100% city grade signal over Two Rivers. Tri-County and Metro North contend that even if the proposed Channel 255A allotment

¹ Channel 272A was allotted to Manitowoc, Wisconsin, but used at Two Rivers, Wisconsin, under the old 10 mile rule.

is made, at a site 12.1 kilometers southwest of Two Rivers, city grade coverage could not be provided due to the close proximity of the Manitowoc County Airport. WTRW included a letter from the Manager of the Manitowoc County Airport indicating any tower higher than 41 feet above average elevation next to the airport and 138 feet at the fringe of the three mile area would be a hazard to air navigation. Tri-County also contends that a tower site for Channel 255A does not exist due to the local airport and the reluctance of property owners to allow construction of a tower within the site area. Metro North provided letters from the Mayor of Manitowoc stating that the proposed location of a tower for Channel 255A is not compatible with surrounding land uses. According to the mayor, the proposed tower site is in an area offering both high environmental quality and a strong development potential for upscale, residential housing. Metro North also included a letter from the owner of property (19.71 acres) in the suggested tower location area stating that he does not intend to allow any tower structure on his property along Silver Creek.

3. In its reply comments, High Mark contends that the comments consist of only "frivolous allegations and irrelevant facts" that do not affect the rule making proposal. High Mark argues that the comments pertaining to lack of site availability provide no basis to support a conclusion that the FAA would not approve a site, nor do they provide sufficient evidence that the necessary broadcast tower cannot be built. Further, High Mark notes that the comments do not claim that zoning will be denied, only that a tower would not be compatible with existing land use. High Mark argues that this does not constitute evidence that no appropriate site exists. High Mark points out that at the rule making stage, it must only show a reasonable assurance of a site and not a particular specified site. It is up to other interested parties to show, with technical support, that there is no possible site location. With regard to Channel 272A, High Mark points out that it is within the Commission's authority to implement corrections such as an editorial change to the FM Table without creating a public notice and comment period.

4. In 1986, we granted a construction permit for a change of community of license of Station WQTC-FM from Two Rivers, Wisconsin, to Manitowoc, Wisconsin (BPH-851231MN). An application for a license to cover the construction permit was filed and granted (BLH-860922KB). In accordance with that action, the Commission's engineering data base shows the licensed city for Station WQTC-FM, as Manitowoc. Therefore, as Station WQTC, Channel 272A, is licensed to Manitowoc, Wisconsin, we will take this opportunity to make an editorial correction to the FM Table of Allotments.

5. Based upon the information presented in this proceeding, we believe the public interest would be served by the allotment of Channel 255A to Two Rivers, Wisconsin, as that community's first local FM broadcast service. Channel 255A can be allotted to Two Rivers consistent with the Commission's spacing requirements with a site restriction 13.5 kilometers

(8.4 miles) southwest of the community.² The site restriction will prevent a short spacing to Station WQLH, Channel 253C1, Green Bay, Wisconsin. A staff engineering analysis, in response to comments concerning site availability, has determined that there is a theoretical site which is appropriate for allotment purposes. The site will provide a 70 dBu signal to the community, is located beyond the three mile protected area of the Manitowoc airport and is not in a wetland area. We find that none of the above arguments sufficiently demonstrate that no sites exist that meet the Commission's spacing and technical requirements. Generally, at the rule making stage, the Commission does not require detailed showings concerning availability and suitability of a specific transmitter site. Rather, we require a showing demonstrating only that such an area does exist. See Keywest, Florida, 3 FCC Rcd 6423 (1988). The question of whether a specific site is legally available and suitable is a matter to be more appropriately considered in connection with an application for a construction permit for the use of Channel 255A. See Pinckneyville, Illinois, 30 R.R. 2d 1344, 1347 (1974).

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 30, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Manitowoc, Wisconsin	221A, 272A
Two Rivers, Wisconsin	255A

7. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Report and Order to the following:

Seehafer Broadcasting Corporation
Station WQTC
3730 Mangin Street
Manitowoc, Wisconsin 54220

² The coordinates for Channel 255A at Two Rivers are 44-03-00 and 87-39-42. This site, which is slightly different from the reference site used in the Notice (44-03-57 and 87-39-44), is located beyond the three mile protected area of the Manitowoc airport.

8. The window period for filing applications for Channel 255A at Two Rivers, Wisconsin, will open on December 30, 1996, and close on January 30, 1997.
9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau